IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 149 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

C.N.VASUDEVAN

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Petitioner

MR AJ DESAI, APP for Respondent No. 1

MR MB AHUJA for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 17/01/2001

ORAL JUDGEMENT

1. Shri C.N.Vasudevan, Regional Passport Officer Petitioner has filed this application under Sec.397 read with Sec.401 of the Code of Criminal Procedure, 1973, (hereinafter referred to as `Code') against the order

dated 20th February, 1992, passed by the learned Chief Metropolitan Magistrate, Ahmedabad, whereby the learned Magistrate was pleased to acquit the respondent No.2-accused under Sec.381 of the Indian Penal Code.

2. The facts giving rise to this application are as under:

2.1 It has been alleged in the petition that F.I.R. No.RC/6/88 dated 3.2.1988 was filed by the petitioner before the Central Bureau of Investigation, Ahmedabad, in respect to which chargesheet No.51 of 1989 was filed on 14.8.1989 in the Chief Metropolitan Magistrate's Court, Ahmedabad City. The accused was arrested on 24.4.1989 at 17.30 hours, was produced before the Magistrate on 26.4.1989, and was remanded to police custody upto 29.4.1989 and was thereafter released on bail on 2.5.1989. It was alleged in the petition the applicant came to know that, during the course of investigation about 500 passport forms were allegedly distributed amongst travel agents, out of which, at the particular stage 70 forms were in fact recovered from respondent No.2. During the course of investigation, it has been further disclosed that, during the month of October, 1987, the accused respondent No.2 while functioning as the night Watchman in the office of the Regional Passport Office, Ahmedabad, dishonestly and fraudulently removed 500 blank passport forms from the office of the Regional Passport Office and disposed off the same in the open market without the consent and knowledge of the Regional Passport Office, Ahmedabad, and thus committed an offence punishable under Sec.381 of the Indian Penal Code i.e. theft by servant of a property in possession of a master which is punishable with imprisonment extending upto 7 years and is also liable for fine. Thus, in the present case it was a case of a warrant triable case and hence was to be tried under the provisions of Chapter 19 Part (A) cases instituted on a police report. It was further alleged that 14 witnesses were cited for the prosecution, and on the filing of the chargesheet, the case came to be registered as Criminal Case No.1470 of 1989. The plea of the accused was recorded on 4.9.1991. Thereafter the matter was heard by the learned Magistrate. As stated earlier, the learned Magistrate by his judgment and order dated 20.2.1992 pleased to observe that in this case, the plea was recorded on 4.9.1991, however, subsequent adjournment the petitioner has not produced any witness and Public Prosecutor was also not present and the advocate of the complainant was also not present. It was observed that the prosecution failed to produce the witnesses and thereby committed negligent act and,

therefore, in absence of other evidence the learned Magistrate has acquitted the accused in this behalf.

3. Mr.M.R.Shah, learned Counsel appeared for the petitioner, Mr.A.J.Desai, learned APP appeared for the respondent No.1-State and Mr.M.B.Ahuja, learned advocate appeared for the respondent No.2 in this behalf.

4. Mr.M.R.Shah, learned counsel for the petitioner submitted that in this case, the respondent No.2 has committed very serious offence of theft of 500 passport forms from the Regional Passport Office, Ahmedabad. It was also alleged that the form was valued Rs.5/- each and about 70 forms were recovered from the accused in this behalf. Accordingly the respondent No.2 has misused his position and has committed theft of 500 passport forms and thereby committed an offence punishable under Sec.381 of the IPC, where the section provides imprisonment for a term which shall extend to 7 years and also liable to fine. It is also submitted that the case does not fall within the provisions of Sec.249 of Cr.P.C. It is also submitted that in this case the plea was recorded on 4.9.91 and the learned Magistrate has without giving sufficient opportunity to the prosecution pleased to discharge and acquitted the respondent No.2 on 20.2.1992. According to the learned counsel, the learned Magistrate has not properly exercised the powers under Sec.252 of the Code. It is further submitted that the learned Magistrate has also not properly considered Chapter 19 of of Code which provides for trial of warrant cases by Magistrate. It is further submitted that in view of the material evidence on record, it cannot be said that the charge against the accused in groundless in this behalf. It is also further submitted that in this case the plea of accused was recorded on 4.4.1991 and on 13.5.91 the advocates were on strike and also the learned APP was sick for some time and thereafter it was only on 6.1.1992 the Special Public Prosecutor, Shri R.K.H.Sharma of CBI, S.P.E. Ahmedabad conveyed to the Hon'ble Court that the two witnesses to which the summons were sought to be served had changed their residence and hence could not be served and the matter stood adjourned to 20.2.1992. On that day the learned Magistrate was pleased to dismiss and discharge the accused without giving any further opportunity to bring other material evidence, wherein 14 witnesses were enlisted by the prosecution. It was, therefore, submitted that the finding of the learned Magistrate to the effect that prosecution was negligent in conducting the case is not correct and, therefore, it was submitted that for acquitting the accused only on the ground that prosecution was negligent is not legal and

valid. Mr.M.R.Shah, learned counsel for the petitioner original complainant has submitted that approach of the learned Magistrate is quite errorneous in this behalf and this Court should quash and set aside the order of the learned Magistrate in this behalf. He submitted that though theft of 500 passport forms committed but the passport forms are very important document and the respondent No.2 cannot take that forms and distribute amongst travelling agents and, therefore, the offence is a very serious offence and the Court should take very serious view about the same in this behalf.

5. I have heard Shri A.J.Desai, learned APP for the respondent No.1- State in this behalf. He has also try to support the case of the original complainant in this behalf.

6. Mr.Ahuja, learned advocate for the respondent No.2 has relied upon the judgment of the Hon'ble Supreme Court in the case of "Common Cause", A Registered Society through its Director Vs. Union of India and others reported in AIR 1997 Supreme Court 1539 and also another case reported in 1985(2) Cri.L.J. 557 in this behalf. In my view, these two judgments does not help the case of the respondent No.2.

7. In my view, the alleged offence committed by the respondent No.2 is a very serious offence and Court should not take it lightly about the theft of 500 passport forms in this behalf. It was not the job of the accused to distribute the passport forms particularly after taking away those forms from the office and allegedly distributed amongst travelling agents.

8. In the facts and circumstances of the case and in view of the discussion made hereinabove, I am of the opinion that this Criminal Revision Application deserves to be allowed and accordingly it is allowed. The order dated 20th February, 1992, passed by the learned Chief Metropolitan Magistrate, Ahmedabad City, Ahmedabad, in Criminal Case No.1470 of 1989 is quashed and set aside. The learned Chief Metropolitan Magistrate, Ahmedabad, will now proceed further in Criminal Case No.1470 of 1989 in accordance with law. I hope and trust that as the case is very old one, the learned Chief Metropolitan Magistrate will try to dispose of the said case at an early date. Rule is made absolute to the aforesaid extent.

(K.M. Mehta, J.)

syed/